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No. 80-1891

IN THE

Supreme Court of the United States

October Term, 1980

UNITED MINE WORKERS OF AMERICA, and DISTRICT NO. 5 OF THE UNITED MINE WORKERS OF AMERICA and ESTEL TAYLOR
Petitioners

vs

KERRY COAL COMPANY
Respondent

PETITIONERS' REPLY BRIEF

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QUESTIONS PRESENTED

1. Should the Court deny review on the grounds that there may have been adequate and independent state grounds for the decision of the Court of Appeals for the Third Circuit?

2. Has Respondent correctly construed Section 301(b) and (e) of the Labor-Management Relations Act in light of this Court's decision in *Carbon Fuel Co. v. United Mine Workers?*

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION

On May 8, 1981, Petitioners United Mine Workers of America ("the International"), District 5 of the United Mine Workers of America ("the District"), and Estel ("Larry") Taylor filed with this Court a Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit. Thereafter, Respondent Kerry Coal Company timely filed a Brief in Opposition. This Reply Brief is filed by Petitioners pursuant to Rule 22.5 of the Rules of the Supreme Court, and addresses two (2) arguments first raised in Respondent's Brief in Opposition.

A. The Court Should Not Deny Review on the Grounds That There May Have Been Adequate and Independent State Grounds for the Decision of the Court of Appeals for the Third Circuit

The authorities cited by Respondent in parts A and D of its argument[1] enunciate a limitation on this Court's jurisdiction to review a judgment of a state's highest court, where review is sought under Section 1257 of the Judicial Code (28 U.S.C. §1257).[2] Under this doctrine,

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1. Respondent's Brief in Opposition to Petition for a Writ of Certiorari, page 10, and page 16, note 4.

2. §1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

the Court will decline review of a state court's opinion rendered on both federal and state law issues, if the opinion would stand on adequate and independent state law grounds. *Herb v. Pitcairn,* 324 U.S. 117, 125 (1954). Here, Petitioners seek review pursuant to Section 1254, subsection (1) of the Judicial Code (28 U.S.C. §1254(1)),[3] which grants the Supreme Court discretionary jurisdiction over cases in the Federal Courts of Appeals. There exists no doctrine parallel to that articulated in *Herb v. Pitcairn, supra,* which would similarly limit this Court's review of federal appellate court decisions. Indeed, Respondent cites no authority for its novel proposition that this Court should deny review of a decision of a *federal* appellate court because the decision ostensibly rests on independent state grounds.

Footnote 2 (Continued)

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For purposes of this section, the term "highest court of a state" includes the District of Columbia Court of Appeals.

3. §1254. Court of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State

Moreover, even if the existence of independent state grounds for the Court of Appeals' decision would influence this Court's determination whether to exercise its permissive jurisdiction in this case, this aspect of Respondent's challenge must still fail. The state law grounds asserted—*i.e.*, that an employee of the International and an employee of District 5 acted in violation of state tort law, and therefore, that in doing so they acted as the agents of their respective labor organizations—were supported by no more than an *inference* erroneously permitted by the Court of Appeals and charitably, though wrongly, characterized as "evidence" sufficient to support the jury's verdict. The Court's attention is invited to the Petition for Writ of Certiorari filed herein[4] for a discussion of the legitimacy of an inference of International or District liability under these circumstances. It is this critical inference, contrary to the prior rulings of this Court, upon which the "independent state law grounds" of the Court of Appeals' opinion rely. If the inference is disallowed by this Court, the Court of Appeals' holding as to the Inter-

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Footnote 3 (Continued)

statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented.

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

4. Petitioner's Argument A, pages 8-15.

national's and District's liability under state tort law must also fall. Thus, there exist no adequate and independent state law grounds to urge against the exercise of this Court's power of review.

B. Respondent Has Misconstrued Section 301(b) and (e) of the Labor-Management Relations Act

In its Brief in Opposition, page 13, note 3, Respondent misconstrues Section 301(b) and (e) of the Labor-Management Relations Act, 29 U.S.C. §185(b) and (e).[5] Respondent argues that, under these two subsections, a labor organization need not have actual knowledge of its agent's acts to be liable for them. Yet subsection (e) contemplates the situation where a labor organization has authorized its agent to pursue a general course of conduct, and then attempts to disclaim liability for specific acts of its agent consistent with that general course of conduct. Thus, had positive, substantial evidence[6] established, for example, that the International *directed* its employee to shut down nonunion mines by force and in carrying out that general directive the employee poured sand into the fuel tank of Respondent's truck, the International could not escape

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5. Subsection (b) provides:

> (b) Any labor organization . . . shall be bound by the acts of its agents. . . .

Subsection (e) provides:

> (e) For the purposes of this section in determining whether any person is acting as an "agent" of another for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

6. For authorities setting forth this requirement, *see,* Petition for Certiorari, page 11, regarding the Section 8(b)(4) violation.

liability under Section 301 by claiming it had not specifically authorized that employee to pour sand into Respondent's fuel tank.

In contrast, subsection (e) was not intended to raise the inference, relied upon by Respondent and the Third Circuit, that where an employee of a labor organization is found to have engaged in the conduct complained of, he *must* have been acting as an agent of the labor organization. To read subsection (e) as authorizing such an inference is to deny effect to this Court's decision in *Carbon Fuel Co. v. United Mine Workers,* 444 U.S. 212 (1979), holding that a labor organization's responsibility under Section 301 for acts of others must be determined by the common law rule of agency. Yet the Court of Appeals upheld the jury's finding that the International and the District were liable, where the only support therefor was an inference that because the individuals connected by circumstantial evidence with illegal activity were *employed* by those labor organizations, the individuals must have been acting at the direction and with the authority of those organizations.[7] This

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7. Petitioners do not seek this Court's review of the jury's finding that Jay Kolenc and Larry Taylor, respectively the International and District 5 employees concerned, were involved inferentially in illegal activity. What is significant vis-a-vis this Petition is that the only evidence of their connection with illegal activity was circumstantial, and that, from such evidence, the jury inferred their liability. That the *inference* of International and District liability was founded on an *inference* of individual illegality compounds the impropriety of the Court of Appeals' ruling, and poses an even greater threat to the vitality of *Carbon Fuel* than if Kolenc's and Taylor's involvement had been established by substantial direct evidence. *See,* note 6, *supra.*

is not simply a question of sufficiency of evidence to uphold a lower court. Rather, it is a question of what proof of a labor organization's relation to illegal activity is required to establish liability. To permit the Court of Appeals' inference of the principal's liability to stand would be tantamount to a rule of a labor organization's absolute liability for all acts of its agents, be they employees or, as in *Carbon Fuel, supra,* local unions, without requiring proof by substantial evidence that the agents acted within the scope of their authority. Therefore, Respondent's construction of Section 301(b) and (e) of the Labor-Management Relations Act should be rejected.

CONCLUSION

Respondent has misapplied the standard for Supreme Court review of decisions of a state's highest court, and has urged the Court to deny Petitioners' request for review on this inapplicable ground. Moreover, Respondent has urged an interpretation of the federal labor laws which is contrary to a recent opinion of this Court. Therefore, Respondent has failed to proffer any cogent argument justifying denial of the Petition for Writ of Certiorari filed herein.

Respectfully submitted,

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